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Paper No. 11

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**OCT 20 2004**

**OFFICE OF PETITIONS**

**ON PETITION**

In re Application of :  
Vanderburg, Mark :  
Application No. 10/046,833 :  
Filed: January 15, 2002 :  
Attorney Docket No. 101175.0001US1 :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed September 30, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to submit formal drawings, the issue fee and the publication fee in a timely manner in reply to the Notice of Allowability and Notice of Allowance mailed May 20, 2003. Accordingly, the above-identified application became abandoned on August 21, 2003. A Notice of Abandonment was mailed on September 25, 2003.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.<sup>2</sup>

<sup>1</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

<sup>2</sup> See MPEP 711.03(c)(III)(C) and (D).

The instant petition lacks item (1). The Office acknowledges the submission of the issue fee and publication fee with the instant petition. However, the Notice of Allowability also put forth the requirement that corrected drawings must be submitted, incorporating the changes made in the Examiner's Amendment mailed on May 20, 2003. To revive the above-identified application, petitioner must now submit the corrected drawings.

Further correspondence with respect to this matter should be addressed as follows:

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By fax:                   (703) 872-9306  
                              ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3282.



Liana Chase  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy